

**NEW HAMPSHIRE EXECUTIVE BRANCH
ETHICS COMMITTEE**

**OFFICE OF THE ATTORNEY GENERAL
ROOM 302**

**JANUARY 3, 2007
8:00 AM**

PRESENT: Committee Chairman David L. Nixon, Deborah Schachter, John Barthelmes, John Blair, Dale Kuehne, Patricia Quigley, L. Douglas O'Brien.

Orville B. Fitch, II, Deputy Attorney General and Recording Secretary Catherine Lord also in attendance.

The meeting was called to order by Chairman Nixon. Roll call taken and attendance is as noted above.

Packets of information distributed that included the Agenda, Redacted versions of Advice Memorandums issued by the Attorney General's Office and the Attorney General's Memorandum on New Hampshire's Right-to-Know Law, RSA Ch. 91-A.

Chairman Nixon and Deputy Attorney General Fitch reviewed duties of this Executive Branch Ethics Committee and answered Committee members questions, particularly pertaining to the restrictions on political activity addressed in *RSA 21-G:29 VI*.

DAG Fitch explained that pursuant to these restrictions, Committee members may be required to refrain from otherwise protected political speech in support of or in opposition to political candidates or propositions.

The Committee discussed whether the restriction in *RSA 21-G:29 VI* against "participating in any way in any election or campaign" precludes attending the Governor's Inaugural Ball on January 13, 2007. DAG Fitch clarified that this question has been previously raised with an initial determination by the Department of Justice that the restriction does not apply to the Inaugural Ball because it is a non-partisan event, more than 50 people will be in attendance and it is therefore exempted from the definition of gift. He further explained that volunteering on behalf of a candidate or proposition is prohibited for Committee members under the Committee's statutes, even though such volunteering is not considered a "contribution" under the campaign finance laws.

Governor Lynch designated David L. Nixon as Chairman of this Committee. Chairman Nixon sought volunteers for Vice-Chair and Secretary. The Committee is free to define the duties of Secretary.

The Committee discussed logistical and administrative issues including:

1. The Committee is administratively attached to the Department of Justice, which will provide appropriate administrative and investigative staff, legal counsel in support of the Committee's work. The AG's office will provide the Committee with legal and support services and with letterhead stationary. There is no fiscal appropriation for such.
2. How complaints are to be filed and processed. The Committee reviewed the procedural requirements of RSA 21-G:31. Any requests to the Committee or to a Committee member for interpretative rulings or advisory opinions should be in writing. The Committee will develop a process on how to proceed with complaints once filed, including initial review by the Committee, investigation, determination of which complaints should go to hearing and adjudication on the merits. Although the AG's Office can assist in the process, the decisions as to the merits of each complaint must be made by the Committee.
3. Investigations into complaints can be conducted by a recused Committee member, who would also act as prosecutor, before the remaining Committee members who will adjudicate. As appropriate, Attorney General's office staff would assist the recused member.
4. The Committee discussed how transgressions are defined in current law. The Committee is charged with investigating breaches of the ethics law. RSA 21-G:21, et seq. Conduct which is the subject of a complaint to the Committee could in some cases also constitute a breach of the criminal code. The Committee should refer criminal breaches to the AG's Office. If the committee finds a breach of the ethics code it may recommend that the agency employing the individual being investigated impose other administrative sanctions pursuant to the State Personnel Rules. To the extent, if any, that this process proves deficient, the Committee can recommend legislative amendments.

2007-14: *Are Advisory Commission Members Required to Submit a Financial Disclosure Form?*

The Committee discussed the question raised by the former State Treasurer whether or not members of the NH College Tuition Savings Plan Advisory Commission must file financial disclosures pursuant to RSA 15-A.

Some members of the Advisory Commission are legislative appointees, raising the question of Committee jurisdiction over those appointees. One of the structures of the statute is that the Committee shares some responsibilities with legislative counterparts. Chairman Nixon recommended that the Committee not rule on jurisdiction at this time, but to issue an opinion that all the New Hampshire College Tuition Savings Plan Advisory Commission members should file a financial disclosure report.

**MOTION BY PATRICIA QUIGLEY
WITHOUT ADDRESSING THE
ISSUE OF JURISDICTION, THE EXECUTIVE BRANCH
ETHICS COMMITTEE ISSUES AN ADVISORY OPINION
THAT ALL MEMBERS OF THE N.H. COLLEGE TUITION
AND SAVINGS ADVISORY COMMISSION SHOULD FILE
RSA 15-A FINANCIAL DISCLOSURE STATEMENTS
SECOND BY DOUG O'BRIEN**

DISCUSSION: John Blair questions how we compile these Advisory Opinions. The Chair responds that they should be catalogued & identified by subject matter. Deputy AG Fitch notes that we will create link to our website to list them.

**MOTION IS MOVED
ALL IN FAVOR – MOTION PASSES**

The Committee could call a couple of joint meetings a year with the legislative ethics committee to provide consistency.

Chairman Nixon requested that, for the next meeting, the Board review the first five Advisory Opinions in the packet that was distributed for discussion at the next meeting. Deputy AG Fitch explained that these Advisory Opinions were answered prior to the current law going into effect. He encouraged the Committee reconsider them under the current law.

Next meeting is **Wednesday, January 17, 2007 at 8:00 am** at the Attorney General's Office in Room 302.

For next meeting:

- Deputy AG Bud Fitch will provide members with the first section of proposed procedural guidelines;
- Deputy AG Bud Fitch will arrange for a draft of Committee stationary to be presented to the committee for its consideration.
- Chairman David Nixon will update and distribute updated list of Committee member information;
- All Committee members will review the first five (5) Department of Justice Ethics Advisory Opinions that were distributed.

**MOTION TO ADJOURN BY JOHN BLAIR
SO MOVED.**

Meeting Adjourned at 9:15 am.

Respectfully submitted,

Catherine Lord
Recording Secretary

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